

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WUXP Licensee, LLC)	Facility I.D. No. 9971
Licensee of Station WUXP-TV)	NAL/Acct. No. 0841420038
Nashville, Tennessee)	FRN: 0006770051

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: April 11, 2008

Released: April 16, 2008

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that WUXP Licensee, LLC (the “Licensee”), licensee of Station WUXP-TV, Nashville, Tennessee (the “Station”), apparently willfully and repeatedly violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children’s programming.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. In the Children’s Television Act of 1990 (“CTA”), Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children’s programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits.⁴ Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a “program-length commercial”).⁵

3. On April 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S)

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.670.

⁴ Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394

⁵ *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

for Station WUXP-TV, (the “Application”) (File No. BRCT-20050401BGJ). In response to Section IV, Question 5 of the Application, the Licensee stated that during the previous license term, it failed to comply with the limits on commercial matter in children’s programming specified in Section 73.670 of the Rules. In Exhibit 19 and in an October 25, 2007 amendment to the Application, the Licensee stated that the Station violated the children’s television commercial limits on four occasions between December 17, 2002, and January 16, 2003.⁶ All four instances involved showing a Buzz Lightyear character in a commercial during the Buzz Lightyear program.

III. DISCUSSION

4. Station WUXP-TV’s record of exceeding the children’s television commercial limits on these four occasions during the last license term, all of which were program length commercials, constitutes an apparent willful and repeated violation of Section 73.670 of the Rules. Overages of this number and nature mean that children have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children’s Television Act of 1990.⁷ Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs.⁸ Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”⁹

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁴

6. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules

⁶ We note that the Licensee’s original Application, filed on April 1, 2005, disclosed one violation of the children’s television commercial limits. The Media Bureau has already addressed this violation by Letter dated April 4, 2007. *WUXP Licensee, LLC*, 22 FCC Rcd 6696 (MB 2007).

⁷ *Children’s Television Programming*, *supra*, 6 FCC Rcd at 2117-18.

⁸ S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989).

⁹ *Children’s Television Programming*, 6 FCC Rcd at 2118.

¹⁰ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

¹¹ 47 U.S.C. § 312(f)(1).

¹² *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁴ 47 U.S.C. § 312(f)(2).

establish a base forfeiture amount of \$8,000 for violation of Section 73.670.¹⁵ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁶

7. In this case, an upward adjustment to the forfeiture amount for the Licensee’s violation of Section 73.670 is justified in light of the number and nature of the commercial overages. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$15,000 for its apparent willful and repeated violation of Section 73.670.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that WUXP Licensee, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for its apparent willful and repeated violation of Section 73.670 of the Commission’s Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, WUXP Licensee, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

11. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room

¹⁵ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁶ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

1-A625, Washington, D.C. 20554.¹⁷

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WUXP Licensee, LLC, c/o Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128, and to its counsel, Kathryn Schmeltzer, Esquire, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.